

Congress of the United States

House of Representatives

109th Congress

Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-6311

May 26, 2005

The Honorable Mike Johanns
Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Re: National Animal Identification System; Notice of Availability of a Draft Strategic Plan and Draft Program Standards, 70 Fed. Reg. 23,961 (May 6, 2005)

Dear Secretary Johanns:

On May 6, 2005, the United States Department of Agriculture published a draft strategic plan that lays out the steps and milestones that the Department will take in establishing a national animal identification system (NAIS). No one can object to the notion that the Department should take appropriate action to ensure that American consumers continue to have access to the safest meat supply in the world. However, as Chairman of the Committee on Small Business, I am concerned that a NAIS may impose excessive and unnecessary costs on America's farms and ranches, the vast majority of which are small businesses under the definitions utilized by the United States Small Business Administration. I urge you to ensure that sufficient time is provided in the final strategic plan to perform an adequate regulatory flexibility analysis of the final NAIS.

The isolated incident in the state of Washington uncovering bovine spongiform encephalopathy (mad cow disease) reduces American consumer confidence in the safety of the meat they consume. In addition, it damages the ability of American producers to export meat, exacerbating an emerging problem of our rapidly disappearing trade surplus for United States agricultural products. This, in turn, diminishes the ability of agricultural exports to counteract our massive trade deficit stemming from the outflow of manufacturing jobs to other countries. No one then can deny that the Department should take necessary steps to ensure the safety of the meat supply in the United States. An effective NAIS certainly can assist farmers, ranchers, and Department personnel in identifying diseased animals.

35-4282810
APHIS

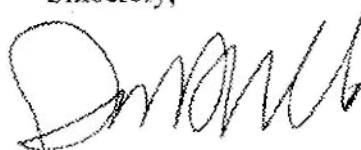
No one can quarrel with the goal of protecting the American meat supply. Nor do I necessarily dispute the need for a NAIS. However, the decisions of well-intentioned federal regulators often have unintended economic consequences that fall disproportionately on small businesses. Congress, in 1980, enacted the Regulatory Flexibility Act (RFA) to require that federal agencies consider the economic consequences of their rulemaking activities on small businesses.

The RFA requires not only an assessment of the economic impact of proposed and final rules on small businesses. It also requires agencies to examine less burdensome alternatives that will achieve the objectives of the agency. The Department must not view the RFA and its analytical processes as a hurdle in the development of a NAIS. Rather, the RFA can enhance the development of a NAIS by focusing the Department's analysis on the least-costly implementation strategy. A NAIS, as the draft strategy documents recognize, will not be successful if it is difficult or too costly for small producers to implement. In short, the RFA provides the tools by which the Department can achieve the optimal outcome -- a safe food supply while imposing the lowest possible cost on small businesses.

Performing a proper regulatory flexibility analysis requires the agency to obtain sound data on costs, input from affected small businesses, and the development of regulatory alternatives. The Animal Plant Health Inspection Service (APHIS) is well aware of these requirements and historically has been the agency within the Department that has prepared the best regulatory flexibility analyses. While I have no doubt APHIS will do its usually excellent job, the absence of a milestone in the draft strategic plan for completing a regulatory flexibility analysis is somewhat troubling. Therefore, I am requesting that the Department and APHIS modify the draft strategy to include the preparation of an adequate regulatory flexibility analysis.

Thank you for your leadership in protecting America's meat supply. I would further request that you place a copy of this letter in the rulemaking record for the development of the NAIS. Should your staff have any questions concerning this letter, please do not hesitate to contact the Committee's regulatory counsel, Barry Pineles, at 202-225-5821.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Manzullo', written in a cursive style.

Donald A. Manzullo
Chairman